IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 21ST NOVEMBER 2006 / 30TH KARTHIKA 1928

Crl.MC.No. 2240 of 2003(D)

CMP.5235/2002 of JUDL.MAGISTRATE OF FIRST CLASS, PALA
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PETITIONER: PETITIONER

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

RESPONDENTS:

SURESH T. KAPPEN, KAPPIL HOUSE,
KIZHATHADIYOOR KARA, LALAM VILLAGE,
KOTTAYAM DISTRICT

BY ADV. SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

CRL. M.C. NO. 2240 OF 2003

Dated this the 21st day of November 2006

ORDER

The State has filed the Crl. M.C. challenging the order of the court below in C.M.P. No. 5235/2002 on application under section 451 Cr.P.C to return the alleged contraband articles to the respondent/accused with a direction that it shall be produced as and when required and on executing a bond for Rs. 1,00,000/- with two solvent sureties each for the like sum. It is seen that 2762 bottles of homeopathic drugs were seized on the allegation that the same contained a high doze of alcohol. The offences alleged are under section 58 A of the Akbari Act and Rules 10 and 11 of the spirituous Preparations Rules.

On a perusal of the order, I find that there is no illegality in the order of the court below. It is to be noted that there is no dispute as to the fact that the articles seized are homeopathic tincture and other homeopathic medicines which contained

alcohol. The case of the accused is that the same are 'drug' within the meaning of section 3(b) of the Drugs and Cosmetics Act 1940. It is noted by the court below that all the bottles seized are sealed bottles of homeopathic medicines with proper label and showing the actual percentage of alcohol content in it. Further more, the court has only ordered to return the materials for safe custody under adequate storage conditions which would not be available in the court or at the offices of the excise Department. I find no ground to quash the impugned order. The Crl. M.C is dismissed.

K.R. UDAYABHANU, JUDGE.

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